

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**Priscilla Sterling, Raine Becker, Shawn
Miller, and John Bennett, individually and on
behalf of all others similarly situated**

Plaintiffs

v.

**The City of Jackson, Mississippi; Chokwe A.
Lumumba; Tony Yarber; Kisha Powell;
Robert Miller; Jerriot Smash; Siemens
Corporation; Siemens Industry, Inc.; and
Trilogy Engineering Services LLC**

Civil No. 3:22-cv-531-KHJ-MTP

Defendants

**CHOKWE A. LUMUMBA, TONY YARBER, KISHA POWELL,
ROBERT MILLER, AND JERRIOT SMASH'S MEMORANDUM IN SUPPORT OF
MOTION FOR JUDGMENT ON THE PLEADINGS TO DISMISS THE SECOND
AMENDED CLASS ACTION COMPLAINT FOR INJUNCTIVE RELIEF
AND MONEY DAMAGES AND/OR FOR QUALIFIED IMMUNITY**

In their Amended Complaint, Plaintiffs asserted three causes of action against the Individual Defendants for (1) violations of their bodily integrity; (2) state-created danger; and (3) common-law negligence. Am. Compl. [Doc. 57] at 77-81, 85-92. The Court dismissed with prejudice the bodily integrity and state-created danger claims against the Individual Defendants. See Order [Doc. 97] at 24-26. Plaintiffs conceded they did not have a negligence claim against Defendants individually, and the Court dismissed that claim with prejudice, too. Mem. in Supp. [Doc. 89] at 2 n.1; Order [Doc. 97] at 26. Nevertheless, Plaintiffs assert the same claims against Defendants in the Second Amended Complaint as those the Court dismissed with prejudice from the Amended Complaint. Compare 2d Am. Compl. [Doc. 101], at 80-85, 89-96, with Am. Compl. [Doc. 57], at 77-81, 85-92.¹

¹ In its Order, the Court is clear that Plaintiffs may amend the Amended Complaint for the limited purposes of taking “another opportunity to plead their bodily integrity claim, focusing solely on the misrepresentation allegations.” Order [Doc. 97] at 21. See also id. at 27 (“The Court will allow Plaintiffs 14 days to replead

Because the Court dismissed all of Plaintiffs' claims in the Amended Complaint against the Individual Defendants with prejudice, Plaintiffs cannot replead the same claims in subsequent pleadings, specifically the Second Amended Complaint. *See Blakely v. Golabs, Inc.*, No. 3:21-cv-2422-L, 2023 U.S. Dist. LEXIS 169825, *32 (N.D. Tex. Aug. 17, 2023) (stating the plaintiff could not proceed on claims that "were already dismissed with prejudice"); *Prosper v. Alvarez*, No. H-20-0583, 2023 U.S. Dist. LEXIS 39106, *20 (S.D. Tex. March 8, 2023) (finding plaintiffs cannot replead claims that were dismissed with prejudice); *Gordon v. Greene*, No. 21-67-JWD-EWD, 2023 U.S. Dist. LEXIS 55127, *21-*22 (Mar. 29, 2023) (reminding plaintiff she cannot reassert claims against defendants that "have been dismissed with prejudice"); *A.A. v. Houston Indep. Sch. Dist.*, No. H-10-03394, 2011 U.S. Dist. LEXIS 5080, *7 n.1 (S.D. Tex. Jan. 19, 2011) ("Plaintiff should note that, to the extent a claim is 'dismissed with prejudice' in this order, the claim cannot be re-filed in the amended complaint.").

Therefore, the Individual Defendants are entitled to a dismissal with prejudice from this civil action.

CONCLUSION

For the forgoing reasons, the Court should dismiss Defendants from this civil action.

RESPECTFULLY SUBMITTED, this the 14th day of March 2024.

/s/ *Terris C. Harris* _____
TERRIS C. HARRIS

Terris C. Harris (MSB #99433)
THE COCHRAN FIRM-JACKSON, LLC
197 Charmant Place, Suite 2
Ridgeland, MS 39157
Telephone: (601) 790-7600

their bodily integrity claim against the City of Jackson."). Nevertheless, Plaintiffs filed an amended pleading that went well beyond the scope of the amendment this Court allowed.

tharris@cochranfirm.com
*Counsel for Tony Yarber, Kishia Powell
and Jerriot Smash*

/s/ John F. Hawkins
JOHN F. HAWKINS

John F. Hawkins (MSB #9556)
HAWKINS LAW, P.C.
226 North President Street (39201)
Post Office Box 24627
Jackson, MS 39225-4627
Telephone: (601) 969-9692
Facsimile: (601) 914-3580
john@hgattorneys.com
*Counsel for Mayor Chokwe A.
Lumumba and Robert Miller*

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2024, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which served a copy of the foregoing on all counsel of record.

/s/ John F. Hawkins
JOHN F. HAWKINS